

REMARKS

The present Amendment is in response to the Official Action dated October 7, 2010 ("the Action"). Claims 1-11, 13, 15-18 and 20 were rejected in the Action. Applicants have amended claims 1 and 18 and no claims have been added or canceled herein. Support for the amended claims can be found in Applicant's originally filed disclosure. Thus, no new matter has been added. Accordingly, claims 1-11, 13, 15-18, and 20 remain pending in the present application. Applicants request reconsideration of the pending claims in light of the following remarks.

The following rejections were set forth by the Examiner in the Action:

- Claims 1, 3-7, 10, 11, 13, 18, and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. Pub. No. 2003/176925 to Paponneau ("Paponneau") in view of U.S. Pat. No. 6,159,211 to Boriani et al. ("Boriani");

- Claim 2 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Paponneau in view of Boriani as applied to claim 1 and further in view of U.S. Pat. No. 6,607,558 to Kuras ("Kuras");

- Claims 8 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Paponneau in view of Boriani as applied to claim 6 and further in view of U.S. Pat. No. 5,370,697 to Baumgartner ("Baumgartner"); and

- Claims 15-17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Paponneau in view of Boriani as applied

to claim 1 and further in view of U.S. Pat. No. 5,899,941 to Nishijima et al.

Applicants previously amended claims 1 and 18 to recite that the first and second apparatus baseplates are "integrally" rather than "immovably" coupled to the trunk. However, the Examiner has maintained his position in the Action that Paponneau contemplates this feature. Applicants have amended claims 1 and 18 herein to more clearly recite the interface of the baseplates and trunk as one "wherein the first and second apparatus baseplates and the trunk form a unitary, solid structure." Paponneau clearly does not contemplate a solid structure comprising a trunk and baseplates, and Boriani does not cure this deficiency. As such, Paponneau does not teach this feature alone or in combination with Boriani. Thus, Applicants respectfully assert that a *prima facie* case of obviousness cannot be made using the cited references in view of the pending claims. Accordingly, Applicants respectfully assert that independent claims 1 and 18 are unobvious in view of the cited references and are in condition for allowance. Claims 2-11, 13, 15-17, and 20 are also unobvious and in condition for allowance due to, *inter alia*, their dependence from their respective unobvious base claims.

Notwithstanding that a *prima facie* case of obviousness cannot be made using the cited references, Applicants respectfully assert that independent claims 1 and 18 are also unobvious because one of ordinary skill in the art would not look to combine Paponneau, the primary reference, with Boriani to arrive at the claimed invention. As noted by the Examiner, Paponneau discloses an apparatus for preparing an intervertebral space with two baseplates. However, what the Examiner refers to as engagement holes 64A-C and 66A-C on the peripheral flange of

each of endplates 24, 26 are not in fact engagement holes but are instead adapted to facilitate bone fusion. See paragraphs [0010] and [0017] of Paponneau. Consequently, there is no teaching of a tool in Paponneau used to engage and manipulate spacer 20, let alone of positioning such openings on an inwardly facing surface of a baseplate such that a tool can engage any one of the openings 64A-C and 66A-C in endplates 24, 26 with an angled perimeter. While the Examiner correctly found that Paponneau failed to disclose plates having an anterior facing surface extending perpendicular to the anterior surgical approach and two anterior-laterally facing surfaces each extending at an angle from the anteriorly facing surface, Applicants respectfully assert that there would be no common sense reason to combine these features, as taught in Boriani, into the implant of Paponneau, such that it gives a surgeon the ability to orient the implant of Paponneau from different angles to provide greater versatility in manipulating the implant's position. Any consideration to modify Paponneau to incorporate flat surfaces used as surgical approaches where the holes in Paponneau have been specifically placed for bone ingrowth is impermissible hindsight reasoning. It simply would not have been obvious to modify Paponneau to incorporate these features of Boriani.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: January 7, 2011

Respectfully submitted,
Electronic signature:
/Ryan L. Bergeron/
Ryan L. Bergeron
Registration No.: 66,377
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicant

1286537_1.doc